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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

) Case No.	
OMEED TABIEI, individually and on)	
behalf of all others similarly situated,	) <u>CLASS ACTION</u>	
)	
Plaintiff,	) COMPLAINT FOR VIOLATIONS	
	) OF:	
vs.)	
	)	1. NEGLIGENT VIOLATIONS
AFLAC, INCORPORATED, and	)	OF THE TELEPHONE
DOES 1 through 10, inclusive,	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]
	)	2. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
Defendant.	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]
	)	3. NEGLIGENT VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
	)	4. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
)	
)	
	) <u>DEMAND FOR JURY TRIAL</u>	

1 Plaintiff OMEED TABIEI (“Plaintiff”), individually and on behalf of all
 2 others similarly situated, alleges the following upon information and belief based
 3 upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
 6 similarly situated seeking damages and any other available legal or equitable
 7 remedies resulting from the illegal actions of AFLAC INCORPORATED
 8 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
 9 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
 10 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the
 11 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

12 **JURISDICTION & VENUE**

13 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
 14 a resident of California, seeks relief on behalf of a Class, which will result in at
 15 least one class member belonging to a different state than that of Defendant, a
 16 Georgia company. Plaintiff also seeks up to \$1,500.00 in damages for each call in
 17 violation of the TCPA, which, when aggregated among a proposed class in the
 18 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
 19 Therefore, both diversity jurisdiction and the damages threshold under the Class
 20 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

21 3. Venue is proper in the United States District Court for the Central
 22 District of California pursuant to 28 U.S.C. § 1391(b) and because Defendant does
 23 business within the State of California and Plaintiff resides within the County of
 24 Los Angeles.

25 **PARTIES**

26 4. Plaintiff, TERRI ALVES (“Plaintiff”), is a natural person residing in
 27 Los Angeles, California and is a “person” as defined by 47 U.S.C. § 153 (39).

28 5. Defendant, AFLAC INCORPORATED (“Defendant”) is a business

1 engaged in the sale of insurance services to consumers, and is a “person” as defined
2 by 47 U.S.C. § 153 (39).

3 6. The above named Defendant, and its subsidiaries and agents, are
4 collectively referred to as “Defendants.” The true names and capacities of the
5 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
6 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
7 names. Each of the Defendants designated herein as a DOE is legally responsible
8 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
9 Complaint to reflect the true names and capacities of the DOE Defendants when
10 such identities become known.

11 7. Plaintiff is informed and believes that at all relevant times, each and
12 every Defendant was acting as an agent and/or employee of each of the other
13 Defendants and was acting within the course and scope of said agency and/or
14 employment with the full knowledge and consent of each of the other Defendants.
15 Plaintiff is informed and believes that each of the acts and/or omissions complained
16 of herein was made known to, and ratified by, each of the other Defendants.

17 **FACTUAL ALLEGATIONS**

18 8. Beginning on or around April 30, 2018, Defendant contacted Plaintiff
19 on Plaintiff’s cellular telephone number ending in -4120, in an attempt to solicit
20 Plaintiff to purchase Defendant’s services.

21 9. Defendant used an “automatic telephone dialing system” as defined
22 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

23 10. Defendant contacted or attempted to contact Plaintiff from telephone
24 number (323) 694-3488 confirmed to be Defendant’s number.

25 11. Defendant’s calls constituted calls that were not for emergency
26 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

27 12. Defendant’s calls were placed to telephone number assigned to a
28 cellular telephone service for which Plaintiff incurs a charge for incoming calls

pursuant to 47 U.S.C. § 227(b)(1).

13. During all relevant times, Defendant did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

14. Further, Plaintiff's cellular telephone number ending in -4120 was added to the National Do-Not-Call Registry on or about March 3, 2018.

15. Defendant placed multiple calls soliciting its business to Plaintiff on his cellular telephone ending in -4120 on or around April 30, 2018.

16. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

17. Plaintiff received solicitation calls from Defendant within a 12-month period.

18. Defendant continued to call Plaintiff in an attempt to solicit its services and in violation of the National Do-Not-Call provisions of the TCPA.

19. Upon information and belief, and based on Plaintiff's experiences of being called by Defendant after being on the National Do-Not-Call list prior to Defendant's initial call, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

20. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the two proposed classes (hereafter, jointly, "The Classes").

21. The class concerning the ATDS claim for no prior express consent (hereafter "The ATDS Class") is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from

1 Defendant to said person's cellular telephone made
2 through the use of any automatic telephone dialing
3 system or an artificial or prerecorded voice and such
4 person had not previously consented to receiving such
5 calls within the four years prior to the filing of this
6 Complaint

7 22. The class concerning the National Do-Not-Call violation (hereafter
8 "The DNC Class") is defined as follows:

9 All persons within the United States registered on the
10 National Do-Not-Call Registry for at least 30 days, who
11 had not granted Defendant prior express consent nor had
12 a prior established business relationship, who received
13 more than one call made by or on behalf of Defendant
14 that promoted Defendant's products or services, within
15 any twelve-month period, within four years prior to the
16 filing of the complaint.

17 23. Plaintiff represents, and is a member of, The ATDS Class, consisting
18 of all persons within the United States who received any collection telephone calls
19 from Defendant to said person's cellular telephone made through the use of any
20 automatic telephone dialing system or an artificial or prerecorded voice and such
21 person had not previously not provided their cellular telephone number to
22 Defendant within the four years prior to the filing of this Complaint.

23 24. Plaintiff represents, and is a member of, The DNC Class, consisting
24 of all persons within the United States registered on the National Do-Not-Call
25 Registry for at least 30 days, who had not granted Defendant prior express consent
26 nor had a prior established business relationship, who received more than one call
27 made by or on behalf of Defendant that promoted Defendant's products or services,
28 within any twelve-month period, within four years prior to the filing of the
complaint.

25. Defendant, its employees and agents are excluded from The Classes.

1 Plaintiff does not know the number of members in The Classes, but believes the
2 Classes members number in the thousands, if not more. Thus, this matter should
3 be certified as a Class Action to assist in the expeditious litigation of the matter.

4 26. The Classes are so numerous that the individual joinder of all of its
5 members is impractical. While the exact number and identities of The Classes
6 members are unknown to Plaintiff at this time and can only be ascertained through
7 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
8 The Classes includes thousands of members. Plaintiff alleges that The Classes
9 members may be ascertained by the records maintained by Defendant.

10 27. Plaintiff and members of The ATDS Class were harmed by the acts of
11 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
12 and ATDS Class members via their cellular telephones thereby causing Plaintiff
13 and ATDS Class members to incur certain charges or reduced telephone time for
14 which Plaintiff and ATDS Class members had previously paid by having to retrieve
15 or administer messages left by Defendant during those illegal calls, and invading
16 the privacy of said Plaintiff and ATDS Class members.

17 28. Common questions of fact and law exist as to all members of The
18 ATDS Class which predominate over any questions affecting only individual
19 members of The ATDS Class. These common legal and factual questions, which
20 do not vary between ATDS Class members, and which may be determined without
21 reference to the individual circumstances of any ATDS Class members, include,
22 but are not limited to, the following:

- 23 a. Whether, within the four years prior to the filing of this
24 Complaint, Defendant made any telemarketing/solicitation call
25 (other than a call made for emergency purposes or made with
26 the prior express consent of the called party) to a ATDS Class
27 member using any automatic telephone dialing system or any
28 artificial or prerecorded voice to any telephone number

1 assigned to a cellular telephone service;

2 b. Whether Plaintiff and the ATDS Class members were damaged
3 thereby, and the extent of damages for such violation; and

4 c. Whether Defendant should be enjoined from engaging in such
5 conduct in the future.

6 29. As a person that received numerous telemarketing/solicitation calls
7 from Defendant using an automatic telephone dialing system or an artificial or
8 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
9 claims that are typical of The ATDS Class.

10 30. Plaintiff and members of The DNC Class were harmed by the acts of
11 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
12 and DNC Class members via their telephones for solicitation purposes, thereby
13 invading the privacy of said Plaintiff and the DNC Class members whose telephone
14 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
15 members were damaged thereby.

16 31. Common questions of fact and law exist as to all members of The
17 DNC Class which predominate over any questions affecting only individual
18 members of The DNC Class. These common legal and factual questions, which do
19 not vary between DNC Class members, and which may be determined without
20 reference to the individual circumstances of any DNC Class members, include, but
21 are not limited to, the following:

22 a. Whether, within the four years prior to the filing of this
23 Complaint, Defendant or its agents placed more than one
24 solicitation call to the members of the DNC Class whose
25 telephone numbers were on the National Do-Not-Call Registry
26 and who had not granted prior express consent to Defendant and
27 did not have an established business relationship with
28 Defendant;

- b. Whether Defendant obtained prior express written consent to place solicitation calls to Plaintiff or the DNC Class members' telephones;
- c. Whether Plaintiff and the DNC Class member were damaged thereby, and the extent of damages for such violation; and
- d. Whether Defendant and its agents should be enjoined from engaging in such conduct in the future.

32. As a person that received numerous solicitation calls from Defendant within a 12-month period, who had not granted Defendant prior express consent and did not have an established business relationship with Defendant, Plaintiff is asserting claims that are typical of the DNC Class.

33. Plaintiff will fairly and adequately protect the interests of the members of The Classes. Plaintiff has retained attorneys experienced in the prosecution of class actions.

34. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Classes members is impracticable. Even if every Classes member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

35. The prosecution of separate actions by individual Classes members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Classes members not parties to

1 such adjudications or that would substantially impair or impede the ability of such
2 non-party Class members to protect their interests.

3 36. Defendant has acted or refused to act in respects generally applicable
4 to The Classes, thereby making appropriate final and injunctive relief with regard
5 to the members of the Classes as a whole.

6 **FIRST CAUSE OF ACTION**

7 **Negligent Violations of the Telephone Consumer Protection Act**

8 **47 U.S.C. §227(b).**

9 **On Behalf of the ATDS Class**

10 37. Plaintiff repeats and incorporates by reference into this cause of action
11 the allegations set forth above at Paragraphs 1-36.

12 38. The foregoing acts and omissions of Defendant constitute numerous
13 and multiple negligent violations of the TCPA, including but not limited to each
14 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
15 *47 U.S.C. § 227 (b)(1)(A)*.

16 39. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
17 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
18 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

19 40. Plaintiff and the ATDS Class members are also entitled to and seek
20 injunctive relief prohibiting such conduct in the future.

21 **SECOND CAUSE OF ACTION**

22 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
23 **Act**

24 **47 U.S.C. §227(b)**

25 **On Behalf of the ATDS Class**

26 41. Plaintiff repeats and incorporates by reference into this cause of action
27 the allegations set forth above at Paragraphs 1-36.

28 42. The foregoing acts and omissions of Defendant constitute numerous

1 and multiple knowing and/or willful violations of the TCPA, including but not
 2 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
 3 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

4 43. As a result of Defendant's knowing and/or willful violations of *47*
 5 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class members are entitled an award of
 6 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
 7 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

8 44. Plaintiff and the Class members are also entitled to and seek injunctive
 9 relief prohibiting such conduct in the future.

10 **THIRD CAUSE OF ACTION**

11 **Negligent Violations of the Telephone Consumer Protection Act**

12 **47 U.S.C. §227(c)**

13 **On Behalf of the DNC Class**

14 45. Plaintiff repeats and incorporates by reference into this cause of action
 15 the allegations set forth above at Paragraphs 1-36.

16 46. The foregoing acts and omissions of Defendant constitute numerous
 17 and multiple negligent violations of the TCPA, including but not limited to each
 18 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular
 19 *47 U.S.C. § 227 (c)(5)*.

20 47. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,
 21 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory
 22 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

23 48. Plaintiff and the DNC Class members are also entitled to and seek
 24 injunctive relief prohibiting such conduct in the future.

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FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class

49. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-36.

50. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c), in particular 47 U.S.C. § 227 (c)(5).

51. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

52. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

1 53. Pursuant to the Seventh Amendment to the Constitution of the United
2 States of America, Plaintiff is entitled to, and demands, a trial by jury.

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4
5 Respectfully Submitted this 11th Day of June, 2018.

6 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

7 By: /s/ Todd M. Friedman

8 Todd M. Friedman

9 Law Offices of Todd M. Friedman

10 Attorney for Plaintiff
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